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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,022	05/31/2005	Peter Mikkelsen	742113-34	6147

25570 7590 05/01/2008  
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MCLEAN, VA 22102-8064

EXAMINER
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NGUYEN, PHONG H

ART UNIT	PAPER NUMBER
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3724

NOTIFICATION DATE	DELIVERY MODE
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05/01/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Dbeltran@rmhlaw.com  
LGaughan@rmhlaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/532,022	<b>Applicant(s)</b> MIKKELSEN ET AL.	
	<b>Examiner</b> PHONG H. NGUYEN	<b>Art Unit</b> 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Specification***

1. The specification is objected to under 37 CFR 1.71 because it does not describe how the conveyor belt systems in Figs. 8-10 are routed around rollers 14a and 14b to form an endless belt.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 18 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

It appears that the last paragraph of claim 18 claims the conveyor belt system in Fig. 9. However, it is unclear how the blade 13 is routed around the rollers 14a and 14b to form an endless belt.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen et al. (WO 01/32369 A1), hereinafter Jensen, in view of Ketels (5,702,295).

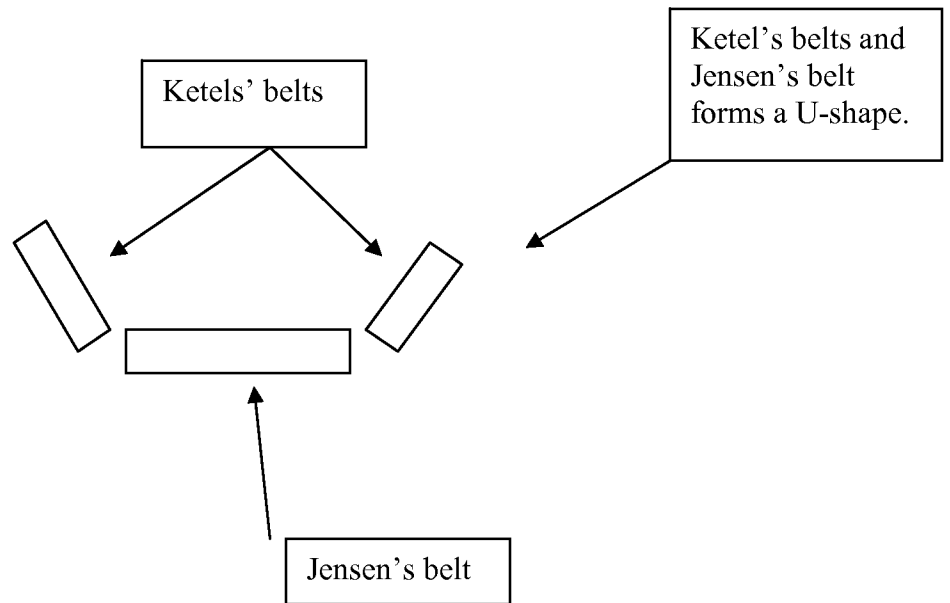
Regarding claims 1, 3, 4, 5, 8, 11 and 18, Jensen teaches a food cutting device comprising a cutting means 13, a scanning means 7, a conveying means (2, 3 and 15) and a control means (a computer system) for controlling and regulating a relevant cutting process parameters. See Figs. 1-2.

Jensen does not teach the conveying means having two conveyors forming a V-shaped configuration.

Ketels teaches a conveying means 2 having two conveyors 2.1 conveyors forming a V-shaped configuration for positioning workpieces. See Fig. 1.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide the conveying means of Jensen two conveyors in form of a V-shaped configuration as taught by Ketels for positioning workpieces.

It is to be noted in claim 18, the modified conveying means of Jensen has a U-shape in a direction traverse to the conveying direction (the direction that faces into or out of the paper) and laterally outer edge portions of the conveyor belt are supported on oppositely angled sets of rollers. Claim 18 does not clearly state whether the U-shape is formed by one belt or a plurality of belts. Therefore, the U-shape formed by three belts as taught by Jensen and Ketels reads on the claim language.



Regarding claim 2, a first conveying unit 2, a second conveying unit 3 and a third conveying unit 15 are best seen in Fig. 2 in Jensen.

Regarding claim 6, the scanning unit being between the first and the second conveying units are best seen in Fig. 1 in Jensen.

Regarding claim 7, Jensen teaches the invention substantially as claimed except for the scanner being adapted to perform a 360° scanning of the products. At the time the invention was made, the use of a 360° scanner was well known in the art. Therefore, it would have been obvious to one skilled in the art to use a 360° scanner in the food-cutting device of Jensen for better scanning the dimensions of the products.

Regarding claim 9, Ketels teaches the invention substantially as claimed except for the angle between the two inclined conveyors 2.1. At the time the invention was made it would have been an obvious matter of design choice to provide an appropriate

angle between 100°-180° formed by the two inclined conveyors for accommodating a desired shape of a product.

Regarding claim 10, Ketels teaches the invention substantially as claimed except for the angle of inclination being automatically adjustable.

It has been held that the provision of adjustability, where need, is not a patentable advance. In re Brandt, 20 CCPA (Patents) 1005, 64 F.2d 693, 17 USPQ 295.

It has been held that it is not “invention” to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. In re Rundell, 18 CCPA 1290, 48 F.2d 958, 9 USPQ 220.

Therefore, it would have been obvious to one skilled in the art to make the inclined conveyors automatically adjustable since such practice has been held as routine in the art.

Regarding claims 12 and 15, Ketels teaches the invention substantially as claimed except for the inclined conveyors being driven by a common drive means. At the time the invention was made, it would have been an obvious matter of design choice to provide a common drive means for the inclined conveyors for easier controlling the speed of the inclined conveyors.

Regarding claims 13 and 14, conveyor belts 2.1 are best seen in Fig. 1 in Ketels.

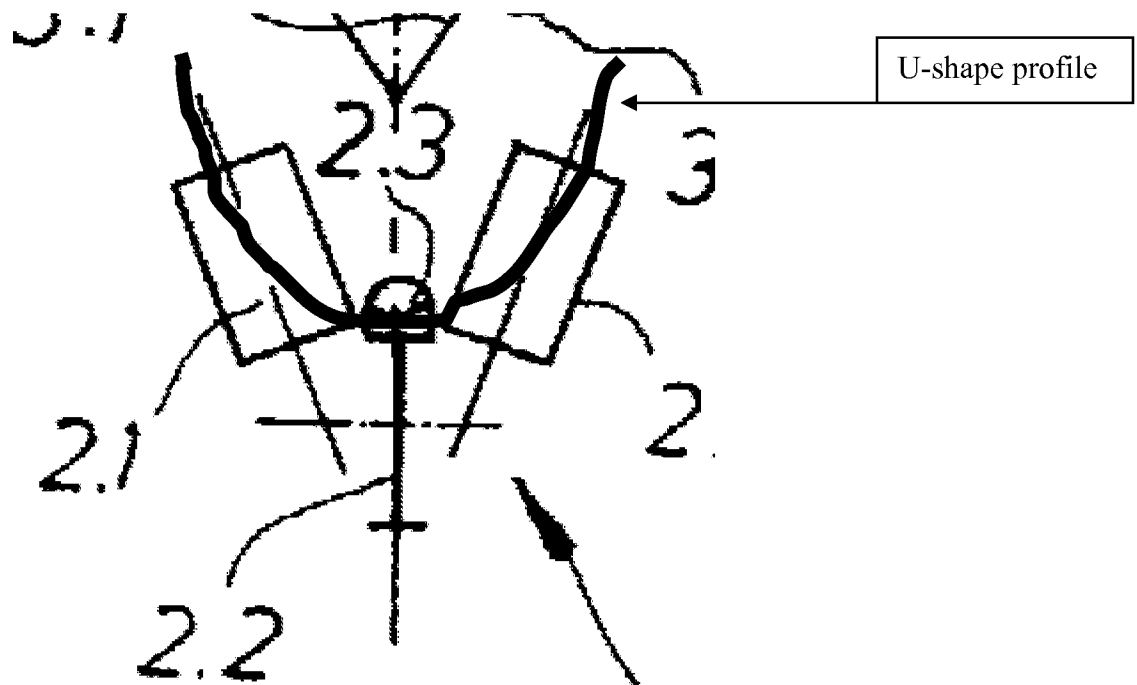
Regarding claim 16, Jensen and Ketels teach using a computer system to control conveyor speed and cutting rate.

Regarding claim 17, the rotating knife 10 is best seen in Fig. 2 in Jensen.

*Response to Arguments*

6. Applicant's arguments filed on 04/04/2008 have been fully considered but they are not persuasive.

The Applicant argues that Ketels' belts form a W-shape but not a U-shape. This argument is not persuasive. A U-shape profile can be drawn in the belt system of Ketels. Therefore, Ketels teaches a U-shaped conveyor belts. Furthermore, the belt system of Jensen and Ketels forms a U-shape as shown above.



The Applicant argues that it would not be obvious to add the belt system of Ketels to the cutting assembly of Jensen. This argument is not persuasive. Adding the side conveyor belts of Ketels to Jensen's conveyor belt system helps holding and positioning the workpiece in place. Therefore, it would have been obvious to one skilled in the art to

incorporate the Ketels' belts to the Jensen's conveyor belt system to help holding and positioning a workpiece in place

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHONG H. NGUYEN whose telephone number is (571)272-4510. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Timothy V Eley/  
Primary Examiner, Art Unit 3724

/P. H. N./  
Examiner, Art Unit 3724  
April 26, 2008